

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

Pre-MUR 478

DATE SUBMISSION RECEIVED: 10/1/08

DATE ACTIVATED: 10/27/08

EXPIRATION OF SOL: 12/1/10 – 4/10/13

SOURCE: Skyway Concession Company, LLC

RESPONDENTS: Skyway Concession Company, LLC
Fernando Redondo

RELEVANT STATUTES: 2 U.S.C. § 441e
2 U.S.C. § 441f
11 C.F.R. § 110.1(g)(1) and (2)
11 C.F.R. § 110.20(b)

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Skyway Concession Company, LLC ("SCC") _____ on

behalf of itself and its Chief Executive Officer, Fernando Redondo ("the respondents").

SCC admits that it violated 2 U.S.C. § 441e by making a total of \$13,085 in nonfederal

contributions with funds authorized by Mr. Redondo, who is a foreign national. _____

_____ also indicates that SCC and Mr. Redondo violated the Federal Election

Campaign Act of 1971, as amended, ("the Act"), when Mr. Redondo made a \$2,000

prohibited federal contribution, which he approved for reimbursement with SCC funds.

2 U.S.C. §§ 441e and 441f. According to _____, these violations of

the Act were inadvertent and unintentional.

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1 Based on all of the available information, we recommend that the Commission:
2 open a MUR; find reason to believe that Skyway Concession Company, LLC violated
3 2 U.S.C. §§ 441e and 441f; find reason to believe that Fernando Redondo violated
4 2 U.S.C. §§ 441e and 441f;

5
6 **II. FACTS**

7 Respondent Skyway Concession Company, LLC is a Delaware limited liability
8 company, which is headquartered in Chicago, Illinois. [http://sos-](http://sos-res.state.dc.us/tin/controller)
9 [res.state.dc.us/tin/controller](http://sos-res.state.dc.us/tin/controller) (last accessed December 22, 2008). 11 C.F.R. § 110.1(g)(1).
10 SCC is wholly-owned by Skyway Concession Company Holdings, LLC ("SCCH"),
11 which is a subsidiary of foreign nationals.¹
12
13 SCC was formed on or about September 30, 2004 for the exclusive purpose
14 of operating and maintaining the 7.8 mile Chicago Skyway toll bridge and highway. *See*
15 *Central Parking Corporation Partnership Selected for Chicago Skyway Toll Road*
16 *System*, www.businesswire.com (January 18, 2005); *Chicago Skyway Handed Over to*
17 *Cintra-Macquarie After Wiring \$183m*, www.tollroadnews.com (January 24, 2005). The

¹ SCCH is owned by two Delaware limited liability companies, Cintra Skyway LLC and Chicago Skyway Partnership. The available information indicates that Cintra Skyway LLC is wholly owned by the Spanish corporation, Cintra Concesiones De Infraestructuras De Transport SA, a private-sector developer of transportation infrastructure. *See* 2008 Thomson Extel Financial Database. Chicago Skyway Partnership is owned by the Australian Macquarie Infrastructure Group and Macquarie Infrastructure Partners. The Macquarie Infrastructure Group develops and operates toll roads and Macquarie Infrastructure Partners is an unlisted diversified fund focusing on infrastructure investments in the United States. *See Central Parking Corporation Partnership Selected for Chicago Skyway Toll Road System*, www.businesswire.com (January 18, 2005), 2008 Thomson Extel Financial Database; www.macquarie.com (last accessed December 22, 2008.); *see also* Skyway Concession Company Holdings LLC and Subsidiary, Consolidated Financial Statements December 31, 2006 and 2005, dated April 30, 2007.

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1 company CEO, Fernando Redondo, is a Spanish citizen working in the United States on
2 an LIA visa.

3 From November 29, 2005 through March 18, 2008, Mr. Redondo, on behalf of
4 SCC, authorized 30 contributions totaling \$13,085 to state and local political
5 committees.² _____ The available

6 information indicates that the funds used by SCC to make these nonfederal political
7 contributions were derived from domestic revenues. _____

8 _____ Specifically, SCC maintains a United States bank account into which it
9 deposits receipts from tolls collected on the Chicago Skyway and from which the
10 company pays expenses associated with its operations, including the subject political
11 contributions. _____ According to SCC, funds from foreign national
12 sources are not deposited into this account. _____ With a few
13 exceptions, it appears that SCC made its political contributions based on the
14 recommendations of its public relations consultant, Avis LaVelle. _____

15 _____
16 _____³ Typically, Ms. LaVelle either contacted Mr.
17 Redondo directly with recommendations regarding which political contributions SCC

² SCC is treated by the Internal Revenue Service ("IRS") as a "disregarded entity" for tax purposes, which means that its activities are treated in the same manner as a branch or division of its owner. _____

_____ 26 §§ C.F.R. 301.7701-3(b)(1) and 7701-2(a) and (c)(2). Therefore, SCC's taxes are consolidated with those of SCCH, which chooses to file its income taxes as a partnership, per its membership agreement. *Id.* A contribution by an LLC that elects to be treated as a partnership by the IRS will be considered a contribution from a partnership pursuant to 11 C.F.R. § 110.1(g)(2).

³ According to Mr. Redondo, he decided that SCC should support Robert Schillerstrom, the DuPage County Board Chairman, whom Mr. Redondo met at an event regarding the privatization of infrastructure, without the advice of Ms. LaVelle. Redondo Interview. The documents provided _____ also appear to indicate that one campaign committee, the Friends of John A. Pope, solicited contributions from SCC on two occasions by faxing fundraising invitations directly to Mr. Redondo.

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1 should consider or sent fundraising invitations/solicitations to him via his assistant. *Id.*

2 At this point in the process, Mr. Redondo's assistant filled out check requisition forms,
3 which, in all but two instances, he then approved.⁴ *Id.* Mr. Redondo also co-signed all
4 the nonfederal contribution checks at issue in this matter. _____

5 _____ Mr. Redondo's involvement in SCC's political activities often extended to his
6 attendance at fundraising events for political committees to which the company had made
7 contributions. The documents provided _____ indicate that
8 Mr. Redondo attended at least seven of these fundraising events, and on one occasion, he
9 served on the Honorary Host Committee at a holiday reception for Ward Alderman John
10 A. Pope. _____

11 Mr. Redondo made a \$2,000 federal contribution to the Friends of Dick Durbin
12 committee with a personal check, dated May 1, 2007. _____

13 _____ Prior to making this federal contribution, Mr. Redondo submitted a check
14 requisition form requesting "[r]eimbursement for Friends of Dick Durbin – 2 tickets."
15 ("Direct corporation [sic] donations not excepted [sic].") *Id.* The reimbursement request,
16 dated April 13, 2007, was approved by Mr. Redondo and SCC's Chief Financial Officer
17 Cho Hang "Augustine" Yeung.⁵ Mr. Redondo was reimbursed for his federal political
18 contribution by SCC with a company check, dated May 1, 2007. *Id.*

⁴ On two occasions, SCC's Chief Financial Officer, Cho Hang "Augustine" Yeung, a permanent U.S. resident and green card holder, authorized two check requisition forms for nonfederal political contributions. Mr. Redondo co-signed both contribution checks.

_____ The evidence indicates that although Mr. Redondo's name does not appear on these two forms, he approved all the political contributions made by SCC. _____ Redondo Interview.

⁵ This Office does not recommend making a separate finding with respect to Mr. Yeung because his superior, Mr. Redondo, who also approved the check requisition forms at issue, has taken responsibility for this activity.

1 SCC states that it became aware there might be a problem with the contributions
2 at issue during July 2008, or shortly after, through a newspaper article concerning
3 political contributions made by Transurban, the U.S. subsidiary of an Australian
4 company. _____ | Anita Kumar, *Toll Road Firm Made Illegal*
5 *Contribution*, WASHINGTON POST, July 3, 2008, at B05. See also MUR
6 6093(Transurban). According to the news article, Transurban, which invests in building
7 and maintaining toll roads in Virginia, violated the Act by using foreign funds to make
8 political contributions to nonfederal candidates.⁶ In response to this news article, SCC
9 retained outside counsel to investigate its political contribution practices and determine if
10 the company was in compliance with federal campaign law. This investigation
11 concluded that SCC had violated federal law due to Mr. Redondo's involvement in
12 approving the subject nonfederal contributions as well as the company's reimbursement
13 of Mr. Redondo's federal political contribution. _____ |

14 SCC states that it has taken a number of corrective actions in response to the
15 findings of its internal investigation. SCC requested and received refunds of all
16 campaign contributions made by the company as well as a refund from Mr. Redondo of
17 the \$2,000 reimbursement he received. _____ |

18 _____ | SCC's Board of Directors also passed a resolution establishing
19 a Campaign Fund Committee to prevent foreign national funding or involvement in
20 future campaign contributions and to ensure compliance with the Act and Commission
21 Regulations. _____ |

⁶ The Commission recently settled with the respondents in MUR 6093. On October 9, 2008, the Commission found reason to believe that Transurban Group and Transurban USA Inc. violated 2 U.S.C. § 441e, _____ | On January 16, 2009, the Commission accepted the signed conciliation agreement and closed the file.

1 This Committee, comprised solely of U.S. citizens or lawfully admitted permanent
2 residents, will make political contributions exclusively to nonfederal political committees
3 out of an annual budget of \$5,000 funded out of revenues generated on the Chicago
4 Skyway Toll Bridge. *Id.*

5 In addition, SCC's General Counsel has already briefed senior management on
6 the relevant federal campaign finance law and regulations as well as the company's
7 revised campaign contribution policy. Finally, SCC is in the process of drafting a formal
8 campaign contribution policy to ensure future compliance with federal and state
9 prohibitions, limits and reporting requirements, which will be distributed to all SCC's
10 employees.

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12 **III. LEGAL ANALYSIS**

13 **A. Skyway Concession Company, LLC and Mr. Redondo Violated**
14 **2 U.S.C. § 441e**

15
16 The Act defines "contribution" as anything of value made by any person for the
17 purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). It is
18 unlawful for a foreign national, directly or indirectly, to make a contribution or donation
19 of money or other thing of value, or make an expenditure in connection with a federal,
20 state, or local election. 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). A "foreign
21 national" is an individual who is not a citizen of the United States or a national of the
22 United States and who is not lawfully admitted for permanent residence. 2 U.S.C.
23 § 441e(b)(2). The term also encompasses "a partnership, association, corporation,
24 organization, or other combination of persons organized under the laws of or having its

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1 principal place of business in a foreign country." 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C.
2 § 611(b)(3)).

3 Commission regulations implementing 2 U.S.C. § 441e prohibit foreign nationals
4 from directing, dictating, controlling, or directly or indirectly participating in the
5 decision-making process of any person, including a corporation, with regard to that
6 person's federal or nonfederal election-related activities, such as decisions relating to
7 making contributions, expenditures or disbursements in connection with elections for any
8 local, state, or federal office or decisions concerning the administration of a political
9 committee. 11 C.F.R § 110.20(i).

10 In addressing the issue of whether a domestic subsidiary of a foreign national may
11 make contributions in connection with local, state or federal campaigns for political
12 office, the Commission has looked to two factors when giving advice to requestors: the
13 source of the funds used to make the contributions and the nationality status of the
14 decision makers. See Advisory Opinion 2006-15 (TransCanada). Regarding the source
15 of funds used to make contributions in connection with local, state or federal elections,
16 the Commission did not permit a domestic corporation to make such contributions when
17 the source of funds was a foreign national, reasoning that this essentially permitted the
18 foreign national to make contributions indirectly when it could not do so directly. See
19 Advisory Opinion 1989-20 (Kuilima)(Because Asahi Japan is Kuilima's predominant
20 source of funds, it would essentially be making a contribution to the committee through
21 Kuilima).

22 Even if the funds used for political contributions by a domestic company with
23 foreign ownership are generated domestically, the Commission has also considered the

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1 nationality status of the decision makers to determine the legality of the contributions.
2 The Commission has conditioned its approval of contributions by domestic subsidiaries
3 of foreign nationals by requiring that no director or officer of the subsidiary or its parent,
4 or any other person who is a foreign national, participate in any way in the decision-
5 making process regarding the contributions. 11 C.F.R. § 110.20(i); See Advisory
6 Opinion 1985-3 (Diridon)(No person who is a foreign national under 2 U.S.C. § 441e can
7 have any decision-making role or control with respect to any political contribution made
8 by UTDC, Inc.).

9 Thus, the Act prohibits contributions from foreign nationals, as well as
10 contributions from domestic companies where either the funds originate from a foreign
11 national source or a foreign national is involved in decisions concerning the making of
12 the contribution. 2 U.S.C. § 441e; 11 C.F.R. §§ 110.20(b) and (i). As noted above, SCC
13 used funds derived exclusively from domestic sources to make the 30 nonfederal
14 contributions at issue in this matter. However, SCC admits and the evidence confirms
15 that a foreign national, Mr. Redondo, participated directly in SCC's election-related
16 activities by: (1) vetting the campaign solicitations forwarded to him by the company's
17 public relations consultant or deciding himself which nonfederal committees would
18 receive contributions from SCC; (2) authorizing the release of company funds for the
19 purpose of contributing a total of \$13,085 to nonfederal political committees; and (3)
20 signing 30 contribution checks directed to nonfederal political committees. In addition,
21 Mr. Redondo made a \$2,000 prohibited federal contribution to the Friends of Dick

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1 Durbin committee.⁷ Accordingly, we recommend that the Commission find reason to
2 believe that the Skyway Concession Company, LLC and Fernando Redondo violated
3 2 U.S.C. § 441e.

4 B. Skyway Concession Company, LLC and Mr. Redondo Violated
5 2 U.S.C. § 441f
6

7 The Act prohibits any person from making a contribution in the name of another
8 person, knowingly permitting his or her name to be used to effect such a contribution, or
9 knowingly accepting a contribution made by one person in the name of another person.
10 2 U.S.C. § 441f. The Act defines "person" to include a corporation, a partnership or any
11 other organization or group of persons. 2 U.S.C. § 431(11). A principal is liable for the
12 acts of its agents committed within the scope of his or her employment. *Weeks v. United*
13 *States*, 245 U.S. 618, 623 (1918); *Rouse Woodstock Inc. v. Surety Federal Savings &*
14 *Loan Ass'n*, 630 F. Supp. 1004, 1010-11 (N.D.Ill. 1986). Where a principal grants an
15 agent express or implied authority, the principal generally is responsible for the agent's
16 actions that fall within the scope of his authority. *See Weeks*, 245 U.S. at 623;
17 RESTATEMENT (SECOND) OF AGENCY § 228(1); *see also Rouse Woodstock Inc.*,
18 630 F. Supp. at 1010-11 (principal who places agent in position of authority normally
19 must accept the consequences when the agent abuses that authority).

20 SCC admits violating the Act by reimbursing a \$2,000 federal contribution made
21 by its CEO, Mr. Redondo. 2 U.S.C. § 441f. According to _____ Mr.
22 Redondo not only made the prohibited federal contribution to the Friends of Dick Durbin

⁷ There is no evidence that any of the political committees receiving the contributions at issue knew those contributions involved the participation of a foreign national.

1 committee, he also authorized its reimbursement with company funds.⁸ The record in
2 this matter demonstrates that SCC's officers approved the reimbursement of expenses
3 incurred on behalf of the company on a regular basis. _____

4 _____ Therefore, the reimbursement of expenses by SCC's officers like Mr.
5 Redondo are within the scope of their employment, and SCC can be held liable for an
6 officer's approval of the reimbursement of an illegal expense, such as the political
7 contribution Mr. Redondo authorized for reimbursement. Further, Mr. Redondo violated
8 2 U.S.C. § 441f when he authorized the reimbursement of his own federal political
9 contribution to the Friends of Dick Durbin committee. Accordingly, we recommend that
10 the Commission find reason to believe that Skyway Concession Company, LLC and
11 Fernando Redondo violated 2 U.S.C. § 441f.

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⁸ There is no evidence that the Friends of Dick Durbin committee knew that Mr. Redondo's contribution had been reimbursed by SCC.

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12 **V. RECOMMENDATIONS**

13 1. Open a MUR.

14 2. Find reason to believe that Skyway Concession Company LLC violated
15 2 U.S.C. §§ 441e and 441f.

16
17 3. Find reason to believe that Fernando Redondo violated 2 U.S.C. §§ 441e
18 and 441f.

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4. _____

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5. Authorize attached Factual and Legal Analysis.

6. Approve the appropriate letter.

Thomasenia P. Duncan
General Counsel

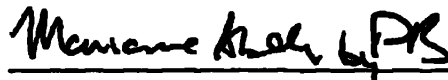
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